IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3708 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH ANUBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

Ms. S.G. Patel for Petitioner

A.J. Desai, A.G.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Subhadraben G. Patel for the petitioner and learned A.G.P. Mr. A.J. Desai on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 16-4-1999 passed by the Commissioner of Police, Rajkot City (the respondent no.1) against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced on record at Annexure "C" inter alia indicate that two Prohibition Cases were registered against the petitioner on 17-1-1999 at Rajkot City Malavianagar Police Station and Rajkot Taluka Police Station wherein it has been alleged that Indianmade foreign liquor has been seized from the possession of the petitioner. That investigation was completed and both the matters are pending for trial in Court.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements against the petitioner on 6-4-1999 and 8-4-1999. That the statements referred to incidents dated 3rd January, 1999 and 13th December, 1998 respectively. That the detaining authority has verified the said statements on 9-4-1999.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the subjective satisfaction of the detaining authority in passing the impugned order has been vitiated on account of unexplained inordinate delay in taking the action. That the live link between the alleged antisocial activity and the impugned action having been snapped, in absence of any reasonable explanation either in the order or contemporaneous record, the impugned order of detention cannot be justified and is rendered invalid.

5. Despite the service of rule, none of the respondents has filed any affidavit.

6. That in the matter of PRADEEP NILKANTH PATURKAR

VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

6.1 That this Court in the case of ELESH N. PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381) after having considered several other authorities of the Supreme Court, has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid.

7. In the instant case also, neither the grounds of detention produced at Annexure "C" nor any of the respondents by filing affidavit has explained the delay, much less, has provided reasonable explanation for taking delayed action by passing detention order. That though the prohibition cases registered against the petitioner was in January, 1999 and the anonymous witnesses have supplied the information in December, 1998 and January, 1999 the lapse of four months in passing the detention order has not been explained satisfactorily. Thus, in the absence of reasonable explanation, the detention order having been rendered invalid on account of delayed action requires to be struck down.

8. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 16-4-1999 passed by the Commissioner of Police, Rajkot City (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Prakash Anubhai Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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